

**Employee Benefits & Executive Compensation Tips & Traps:
What to Do with the ERISA § 408(b)(2) Compensation Disclosures
from your Service Providers –
A Fiduciary Checklist**

Compliance with Exemption for Responsible Plan Fiduciaries

- Confirm that disclosures were received from all covered service providers
- Review disclosures received from all covered service providers to confirm that all of the required disclosures were delivered
- If any disclosures are missing or incomplete, deliver a written request to the covered service provider for the missing information
- If the covered service provider either refuses or fails to deliver the requested information or a satisfactory explanation as to why the information provided was complete:
 - Within 30 days after the earlier of (i) the refusal or (ii) the date which is 90 days after delivery of the written request, deliver a written notice to the Department of Labor with the requisite information about the plan, the responsible plan fiduciary, the covered service provider and the deficiency (*see attached “Sample Notice – Delinquent Service Provider Disclosure”*)
 - If the requested information relates to services to be performed after the end of the 90-day period and is not disclosed promptly after the end of such 90-day period, terminate the contract or arrangement as expeditiously as possible, consistent with the duty of prudence
 - Evaluate whether a prohibited transaction has occurred that must be reported on Form 5500

Steps Toward Procedural Prudence*

- Review the substance of the disclosures
- Confirm that the services described in the disclosures match up with (1) your contract; (2) your plan; and (3) industry standards
 - Consider an RFP
 - Consider consultant
- Consider whether indirect compensation disclosed:
 - is reasonable in light of the direct compensation received
 - poses conflicts for the service provider
 - is otherwise inconsistent with ERISA
- Ask follow-up questions to ensure that you understand the services and the fees
 - Unbundle to the extent appropriate
 - Be mindful of self-dealing
- Make and document a final decision
- Repeat your review periodically

* A fiduciary should undertake the steps that are appropriate in light of the circumstances. This list provides guidance as to general steps that may be appropriate. But all of these steps may not be appropriate or required in every case, and additional steps may be warranted in light of the circumstances.